

Columbia Portland Cement Company and its successor Midwest Portland Cement and United Cement, Lime, Gypsum and Allied Workers International Union, Local No. 24, AFL-CIO, affiliated with Cement, Lime, Gypsum and Allied Workers Division, International Brotherhood of Boilermakers, Forgers & Helpers, AFL-CIO and Donald Fisher and Paul Slack, and Marvin L. Baker, Jr. and Robert Barrett and Robert Wartenbe. Cases 8-CA-18117, 8-CA-18343-1, 8-CA-18063-3, 8-CA-18207-1, 8-CA-18220-1, 8-CA-18221, and 8-CA-18283

November 26, 1993

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On May 31, 1989, the National Labor Relations Board issued its Decision and Order in this case, ordering Respondent Columbia Portland Cement to make whole its striking employees for any loss of earnings and other benefits resulting from the Respondent's unfair labor practices in violation of Section 8(a)(3) and (1) of the Act.¹ On October 2, 1990, the United States Court of Appeals for the Sixth Circuit enforced in part and reversed in part the Board's Order.² A controversy having arisen over the amount of backpay due the employees under the Board's Order, on November 23, 1992, the Regional Director for Region 8 issued and duly served on the Respondent a compliance specification and notice of hearing alleging the amount of backpay due each discriminatee.

Subsequently, the Respondent filed an answer to the backpay specification admitting certain paragraphs, generally denying certain paragraphs, and denying certain other paragraphs by disputing the accuracy of the interim earnings shown for each discriminatee and the amounts owed for medical insurance, medical expenses, and pension fund contributions.

Thereafter, on March 1, 1993, the General Counsel filed with the Board a motion to strike portions of the Respondent's answer and for partial summary judgment, with exhibits attached. The General Counsel essentially alleges that, except as to the issues of interim earnings, medical insurance premiums, and medical and other expenses, the Respondent's answer denying certain paragraphs does not comply with the substantive requirements of Section 102.56 of the Board's Rules and Regulations. Accordingly, the General Counsel requests that the Respondent's answers to certain paragraphs be stricken as deficient insofar as they do not conform to the Board's requirements as to these compliance matters within the Respondent's knowl-

edge, and that these paragraphs be deemed to be admitted as true without taking evidence. The General Counsel further requests that the allegations of two other paragraphs be deemed to be admitted as true because the Respondent's answers to these paragraphs are without merit or lacking in specificity. The General Counsel also moves that a partial summary judgment be granted. On March 5, 1993, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent has not filed a response.

On the entire record in this case, the Board makes the following

Ruling on Motion to Strike and for Partial Summary Judgment

As discussed above, the General Counsel moves to strike the Respondent's answers to certain allegations in the compliance specification and for partial summary judgment on the grounds that the answers are insufficient under Section 102.56 of the Board's Rules and Regulations. We find it unnecessary to pass on that issue at this time, however, because our review of the specification has revealed apparent deficiencies that warrant denial of the General Counsel's motion. In this regard, paragraph 4(B) of the compliance specification alleges that the backpay period for the individuals in group B "begins on April 27, 1987 and ends on May 1, 1988." In the prior Board decision in this case, the Board ordered the Respondent to offer reinstatement to these former strikers upon their application and, in the event that the Respondent refused to offer reinstatement, to make the employees whole for the period "from 5 days after the date on which he or she applied . . . for reinstatement, to the date of the Respondent's offer of reinstatement . . . absent a lawful justification for the Respondent's failure to make such an offer." Following a subsequent charge and complaint, the Board issued another decision based on a stipulation of facts, finding that the Respondent had unlawfully failed and refused to reinstate the strikers.³ In that decision, the Board prescribed the backpay period for those individuals as "the period from April 29, 1987, the date of the Union's unconditional offer [as stipulated by the parties], to April 20, 1988, the date of the Respondent's offer of reinstatement." The backpay period alleged in the compliance specification does not conform with either of the Board's Orders pertaining to these individuals. Moreover, the specification provides no explanation for the apparent inconsistency.

In addition, paragraph 4(C) of the compliance specification alleges that the backpay period for Robert Wartenbe begins on April 18, 1985, and ends on Au-

¹ 294 NLRB 410 (1989).

² 915 F.2d 253 (6th Cir. 1990). The court reversed the Board's termination concerning the backpay period for employee Wartenbe.

³ *Columbia Portland Cement Co.*, 303 NLRB 880 (1991), enf'd. 979 F.2d 460 (6th Cir. 1992).

gust 2, 1985. However, upon review of the Board's earlier decision in this proceeding, the Sixth Circuit held that backpay for Wartenbe should be discontinued as of July 8, 1985, when the Respondent lawfully notified him that he would be discharged for an attack on another employee. Again, the compliance specification offers no explanation for this discrepancy.

For these reasons, we find that the compliance specification is defective in that it does not comport with the make-whole remedy prescribed by the Board and the Sixth Circuit in the pertinent unfair labor practice proceedings and does not explain its failure to do so. In order to cure this defect, the General Counsel must either demonstrate that the specification is consistent with the remedies ordered, or recompute the gross backpay for the affected individuals using the dates

prescribed by the Board and the court. Because we are unable to determine the amount of gross backpay owed to these individuals using the present specification, we deny the General Counsel's motion without prejudice as to refiling based on an amended specification.

ORDER

It is ordered that the General Counsel's motion to strike the Respondent's answer to the backpay specification in part is denied.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 8 for further appropriate action consistent with this decision.